

JAROD BONA (SBN 234327)
BONA LAW PC
4275 Executive Square, Suite 200
La Jolla, CA 92037
Tel: (858) 964-4589
Fax: (858) 964-2301
jarod.bona@bonalawpc.com

Attorney for Plaintiffs, EDWARD TOBINICK, et. al.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EDWARD LEWIS TOBINICK M.D.,) CASE NO.:
A MEDICAL CORPORATION d/b/a)
INSTITUTE OF NEUROLOGICAL) *(pending in the United States District*
RECOVERY, a California medical) *Court for the Southern District of Florida*
Corporation; INR PLLC d/b/a) *Civil Action 9:14-cv-80781-RLR)*
INSTITUTE OF NEUROLOGICAL)
RECOVERY, a Florida professional)
Limited liability company; and) **MOTION TO COMPEL**
EDWARD TOBINICK, M.D., an)
Individual,)
)
) DATE: TBD
Plaintiffs,) TIME: TBD
) CTRM: TBD
)
v.)
)
STEVEN NOVELLA, M.D., an)
Individual,)
)
Defendant.)
)

Pursuant to Federal Rules of Civil Procedure 26 and 45, Plaintiffs Edward Lewis Tobinick, M.D., A Medical Corporation, INR PLLC, and Edward Tobinick, M.D (collectively, "Plaintiffs") respectfully move this Court for an Order compelling the production of documents sought by a properly-issued subpoena from third party Jeffrey Saver ("Saver").¹

I. INTRODUCTION

Plaintiffs have filed an action in the Southern District of Florida against Steven Novella ("Novella") for violation of the Lanham Act.² Saver is not a party to this action, but is believed to have documents that would impeach the Defendant's testimony, negate Defendant's causation arguments, and prove the Defendant's malice. Dr. Saver is a neurologist at the UCLA Comprehensive Stroke Center and has been a key player in a coordinated campaign to assassinate the professional reputation of Plaintiffs. Saver, in fact, developed the plan and facilitated the publication of an L.A. Times hit piece about Plaintiffs that the Defendant purported to rely upon in making false statements and representations about Plaintiffs. *See* Exhibit C, Email from Dr. Jeffrey Saver to Dr. Ralph Sacco, June 27, 2011 (outlining three-part plan to destroy Plaintiff Dr. Tobinick's professional reputation).

On July 24, 2015 at 2:45pm, Saver was served with a subpoena duces tecum at the hospital where he is employed, in Los Angeles, CA.³ On August 12, 2015 Bona Law contacted Saver via email to request the documents, and to determine whether Saver was planning to comply with the subpoena. Saver informed Bona Law that he had never received a subpoena, and asked to be forwarded a copy. Bona Law sent Saver copies of both the notice and the subpoena. After no response from Saver, Bona Law wrote another email to follow up with Saver on the matter.⁴ This was on August 17, 2015. There was still no response from Saver.

¹ See notice and subpoena attached, Exhibit A.

² The first amended complaint is attached hereto as Exhibit B.

³ See proof of service from the process server, Exhibit D.

⁴ The email exchange between Bona Law and Saver is attached as Exhibit E.

1 On August 21, 2015, Bona Law spoke by phone with Saver's receptionist who
 2 stated he was out sick, but that Saver's assistant may be able to help when she
 3 returned to the office on August 24, 2015.

4 On August 24, 2015, Bona Law telephoned Saver's assistant, Stephanie Wong
 5 to ask her about the subpoena. She stated that she did not know anything about it,
 6 but to forward the documents to her, and to Saver, as he reads his email on occasion.
 7 She stated that she would remind him about it when she spoke with him. Bona Law
 8 forwarded the documents to Ms. Wong and Saver that same day.

9 On August 25, 2015 Bona Law emailed a copy of the order from the Court
 10 that the documents were due by September 1, 2015. On August 26, 2015 Bona Law
 11 again followed up with Saver and Ms. Wong. Bona Law received an email from
 12 Ms. Wong stating that Saver is too ill to produce the documents, but would do so
 13 when he returned to the office in mid-September.

14 Because Saver was properly issued a subpoena to produce documents that are
 15 reasonably calculated to lead to the discovery of admissible evidence, and because
 16 Saver did not produce those documents, Plaintiffs respectfully move this Court to
 17 for an Order compelling Saver to produce all of the subpoenaed documents.

18 **II. ARGUMENT**

19 **A. The Subpoenas to Saver Are Proper**

20 **1. The Documents Are Relevant**

21 Rule 26(b)(1) provides "Parties may obtain discovery regarding any
 22 nonprivileged matter that is relevant to any party's claim or defense" Fed. R.
 23 Civ. P. 26(b)(1).

24 The subpoena is narrowly-tailored and requests (1) All communications with
 25 Steven Novella from January 2013 to the present; (2) All documents or
 26 communications concerning or referencing Dr. Edward Tobinick or the Institute for
 27 Neurological Recovery from January 2013 to present; and (3) All documents or
 28 communications w/Medical Board of California relating in any way to Dr. Edward

1 Tobinick or the Institute for Neurological Recovery from January 2013 to present.⁵
 2 With just three requests, the subpoena seeks relevant information relating to the false
 3 and misleading statements made against Plaintiffs.

4 Saver made these statements in a Los Angeles Times article. The defendant
 5 read this article and used these false statements as the basis for his writings about
 6 plaintiffs on his commercial website.

7 **2. The Subpoena Complies with Rule 45**

8 Because Saver is a non-party, Fed. R. Civ. P. 45 is the proper vehicle for
 9 Plaintiffs to seek the discoverable materials. *See, e.g., Behrend v. Comcast Corp.*,
 10 248 F.R.D. 84, 87 (D. Mass. 2008) (non-party required to produce documents in
 11 response to subpoena *duces tecum* under Rule 45). Plaintiffs properly served a
 12 subpoena *duces tecum* on Saver in compliance with Rule 45. Saver does not raise
 13 objections to the use of the Rule 45, nor does he claim any of the proper protections
 14 listed under the Rule.

15 **B. Saver has not complied with the Subpoena**

16 Saver was served with a subpoena on July 24, 2015. There was no response
 17 from Saver until August 12, 2015 when he stated that he had never received a
 18 subpoena. The Court, after several extensions, has declared that discovery must be
 19 complete by September 1, 2015. Plaintiffs have attempted to obtain production from
 20 Saver numerous times, with no response. Although Saver is now ill, he was not ill
 21 when he received the subpoena. He has not contacted counsel for Plaintiffs except
 22 through his assistant on August 26, 2015 via email to state he would not be able to
 23 produce the documents. Saver himself has not contacted counsel for Plaintiffs since
 24 August 12, 2015. He has not sent any documents nor has he responded in any way.
 25 After several extensions from the court, discovery must be complete by September
 26 1, 2015. Plaintiffs do not bring this action lightly; they have no choice to do so in
 27 order to preserve their rights and prosecute their claims.

28 ⁵ See notice and subpoena, Exhibit A.

III. CONCLUSION

Saver was properly served with a subpoena that was narrowly tailored to obtain relevant documents to this case. There was no response from Saver, even before he became ill. As such, this court should order Saver to comply with the subpoena. Therefore, Plaintiffs respectfully request this Court to order a Motion to Compel against Saver.

DATED: August 31, 2015

BONA LAW PC

By: /s/ Jarod Bona
Jarod Bona, Esq.
Attorney for Plaintiffs

DECLARATION OF SERVICE BY MAIL

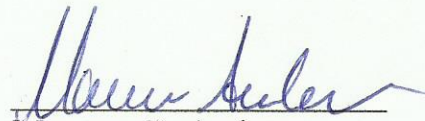
I, the undersigned declare:

1. That declarant is and was at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action' that declarant's business address is 4275 Executive Square, Suite 200, La Jolla, CA 92037.

2. That on August 31, 2015 declarant served the MOTION TO COMPEL by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on August 31, 2015.


Maureen R. Anderson

SERVICE LIST

Jay Marshall Wolman, Esq.
Randazza Legal Group
100 Pearl Street, 14th Floor
Hartford, CT 06103
jmw@randazza.com

Marc John Randazza
Randazza Legal Group
3625 South Town Center Drive
Las Vegas, NV 89135
Email: MJR@randazza.com

Jeffrey Saver
UCLA
100 Stein Plaza, B273
Los Angeles, CA 90095
JSaver@mednet.ucla.edu